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ABSTRACT

Part of a series of classroom aids designed for real estate instructors, this instructional packet was developed to help real estate students understand public and private easements, which most commonly entail the right of a person (or the public) to use the land of another in a certain manner. Following an evaluation form for the packet, a summary presentation is provided covering the various types of public and private easements, how they are formed, and how they can terminate. The presentation is keyed to a series of handouts and overhead masters covering: (1) what is an easement; (2) what is a license; (3) categories of easements; (4) importance of private easements; (5) caveat on private easements; (6) in gross and appurtenant easements; (7) estates in and classifications of appurtenant easements; (8) affirmative and negative easements; (9) ways easements may arise without written expression; (10) exceptions to written requirements; (11) creating implied easements; (12) easement by estoppel; (13) basic requirements for prescriptive easements; (14) qualifications for tacking; (15) ways easements may be terminated; (16) types of private and public easements; (17) creation of public easements by statutory or common law dedication, prescription, or condemnation; (18) elements of common law dedication; (19) acceptance of dedicated public easements; (20) legal restraints on and enablement of condemnation; (21) court decisions; and (22) Texas law concerning statutory dedication of urban and rural areas. A total of 33 overhead masters are included in this packet. (AYC)

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TEACHERS INSTRUCTIONAL PACKET
TIP No. 5
Spring 1985

EASEMENTS IN TEXAS

Texas Real Estate Research Center
College of Agriculture
Texas A&M University
College Station, Texas 77843-2115

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TIPS on the TIP

This Teacher Instructional Packet (TIP) is designed to provide the real estate instructor with a classroom aid. Packets have been reviewed carefully, but there is always room for improvement. Suggestions are welcomed.

Introduction to TIP-5

TIP-5 has been developed to help students understand the easements in Texas. This TIP is divided into two stand-alone parts—private easements and public easements.

This material is a **supplement** to existing course content. It is not a "pat" presentation. Instructors should modify the TIP as needed.

NOTE: Copies of the TRERC Technical Report, "Easements in Texas," were mailed to the Texas real estate instructors. Additional copies are available for $1 each ($2 for out-of-state orders). Request publication No. 422. Instructors have permission to reproduce their complimentary copy in full or in part providing no changes are made to the content.

INSTRUCTORS EVALUATION

In order for the Texas Real Estate Research Center to be able to better assess the effectiveness of this packet, your input is requested. Please complete this form and return it to the address provided.

CONCEPT

1. What overall rating would you give this concept?

useless 1 2 3 4 5 6 7 8 9 10 invaluable

RATING THE ELEMENTS

2. How do you rate the elements of this TIP?

Content:

too general 1 2 3 4 5 6 7 8 9 10 too technical

Amount of material:

too little 1 2 3 4 5 6 7 8 9 10 too much

Format:

too simple 1 2 3 4 5 6 7 8 9 10 too complex

STRENGTHS AND WEAKNESSES

3. What were the strengths of the package? _____

_____

_____

_____

4. What were the weaknesses of the package? _____

_____

_____

SUGGESTIONS

5. What specific changes would you like to see in future TIPs?

_____

_____

6. What additional topics would you suggest for the TIP series?

a. _____ c. _____

b. _____ d. _____

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EASEMENTS IN TEXAS

Easements play a vital role in life. People daily traverse easements either granted, dedicated or condemned for public rights-of-way. Also, people constantly use energy transported along pipeline and utility easements. In rural areas, many tracts not served by public roadways would be rendered practically valueless if it were not for private easements crossing neighboring properties.

An easement is defined as a right, privilege or advantage in real property, existing distinct from the ownership of the land. In other words, easements consist of an interest (or estate) in real property that does not constitute full ownership. Most commonly, an easement entails the right of a person (or the public) to use the land of another in a certain manner.

VISUAL # 1
What is an Easement?

Easements should not be confused with licenses. A license is merely permission given to an individual to do some act or acts on the land of another. It does not give rise to an interest in land as do easements. Licenses need not be in writing to be effective and generally are revocable at any time. Tickets to entertainment or sporting events serve as a good example of licenses.

VISUAL # 2
What is a License?

This presentation will cover two broad categories of easements--private and public. Private easements are those in which the enjoyment and use are restricted to one or a few individuals. Public easements are those in which the rights of enjoyment and use are vested in the public generally or in an entire community.

VISUAL # 3
Categories of Easements

This presentation will cover the various types of private and public easements, how they are formed and how they can terminate. First, let's look at private easements.

Part 1: Private Easements

VISUAL # 4
Importance of Private Easements

Mark and John had been farming and ranching in a particular community for more than 50 years. Several years ago mark purchased some grazing land in a remote section of the county. There were no public roads leading to it. However, John orally permitted Mark to cross part of his property to access the land. The agreement was never written nor recorded.

Recently, John died and his heirs sold the land to some people new to the area. They were not told of the oral agreement between Mark and John. The new purchasers have threatened to bring legal action to terminate Mark's passage over their land. Without the easement, Mark cannot pursue his cattle operation on the property.

This is just one example of the importance of private easements. As will be demonstrated in this section, unless the creation of a private easement is carefully documented and recorded, its legality is questionable.

VISUAL # 5
Caveat on Private Easements

Private easements may be divided into two groups, depending on the entity possessing it. If an individual or business owns the easement, it is said to be an easement "in gross." Pipeline easements belonging to a utility company are a good example of easements in gross. As a general rule, an easement in gross is a personal right that cannot be assigned or otherwise transmitted. The easement thus terminates on the death of the individual owner or the demise of the business. There is authority to the contrary where the easement in gross is (1) placed in writing and (2) explicitly made assignable by the instrument creating it. This rule is particularly true with easements of a commercial nature.

VISUAL # 6
Two Groups of Private Easements

The language of instrument making an easement in gross transferable generally reads as follows: "The terms,

conditions and provisions of this contract shall extend to and be binding upon the grantee, his heirs, successors and assigns." The right thus created is transferable even though it is an easement in gross.

The other type of private easement is known as an "appurtenant easement." Easements of this nature attach or are incident to a particular tract of land and not to a particular individual or business. Appurtenant easements require two different estates or tenements for their existence--a dominant estate and a servient estate. The owner of the dominant estate has the right or privilege to use an easement across the land of another. The land over which the easement exists is the servient estate. It is the land burdened by the easement.

VISUAL # 7
Estates in Appurtenant Easements

Appurtenant easements may be classified further as either affirmative or negative. An affirmative easement gives the dominant tenement the right to actively use the easement on the servient tenement's land. A negative easement restricts the use of the servient tenement's land in favor of the dominant tenement.

VISUAL # 8
Classification of Appurtenant Easements

Perhaps an example can explain better these two types of easements. Suppose landowner "A" wants to build a dam which will back water across landowner "B's" property. To keep "B" from suing, "A" will seek an affirmative easement from "B" allowing "A" to flood a portion of "B's" land. If "A" is successful, "A's" land will be the dominant tenement, and "B's" land will be the servient tenement. "B's" land will be burdened by the standing water.

VISUAL # 9
Affirmative and Negative Easements

Suppose further that "B" becomes dependent upon the supply of water provided by "A's" dam. "B" wants to invest in some livestock but needs the assurance of a permanent source of

water. Here "B" will seek a negative easement from "A." The negative easement would restrict "A" from destroying the dam or draining its water. These are rights "A" would have otherwise except for the negative easement.

The owner of the land over which the easement has been granted has the right of full dominion and use of the land not inconsistent with the reasonable use of the easement by its owner. The only duty an easement imposes on the owner of the servient estate is that of a negative nature. The servient owner is under a duty not to interfere with the enjoyment of the easement. Any repairs or works necessary to the proper use and enjoyment of the easement must be made by the dominant owner.

Appurtenant easements are easily transferable. A conveyance of ownership of the dominant tenement automatically includes the easement across the servient tenement's land. A transfer of the servient estate will include the easement across it if the purchaser has actual or constructive notice of the easement's existence (normally through public records). The merging of the dominant and servient estates terminates the easement. One cannot hold an easement across his or her own land.

Creation of Private Easements

There are various means by which an easement may be created. Each has its own name and distinct requirements. Since easements are interests in land, they generally require some written, tangible evidence prescribed by the statute of frauds in Section 26.01 of the Texas Business and Commerce Code for their creation. There are three ways easements may arise without written expression. They are (1) by implication, (2) by estoppel and (3) by prescription.

VISUAL # 10
Ways Easements may arise Without Written Expression

For an easement to arise by written expression, a written memorandum containing the legal description of the land must be signed by the grantor and delivered to the grantee. The written requirements of the statute of frauds may be excepted where the grantee has (1) paid consideration for the easement in money or services, (2) taken possession of the easement and (3) made valuable and permanent improvements to the easement with the consent of the grantor.

VISUAL # 11
Exceptions to Written Requirements

The written document expressing the easement need not be recorded to be effective. However, to give constructive notice to subsequent purchasers as described in Article 1289 of the Texas Revised Statutes, easements normally are recorded.

Implied easements are created one of three ways: (1) an implied reservation, (2) an implied grant or (3) by way of necessity. Each is distinctive.

VISUAL # 12
Creating Implied Easements

The creation of an implied easement by either reservation or grant requires the prior existence and use of the proposed implied easement. Furthermore, the prior use must have been apparent, permanent, continuous and necessary for the enjoyment of the property granted. In each implied easement case, the court views the implied easement as merely an oversight on the part of the grantor and grantee at the time of the conveyance.

For instance, suppose "A" owns a 40-acre tract of land with a public road running along its southern boundary. "A's" house sits along the northern part of the 40-acre tract. It is served by a private road running north and south. "A" decides to sell the southern 20 acres to "B." However, "A" forgets to reserve a right-of-way easement across the 20 acres for access from the public road to the home.

VISUAL # 13
Example of Implied Easements

This is a classical example of where the court most likely would approve an implied reservation for "A." The easement must have been apparent, permanent and continuously used at the time of the grant. The only other requisite is that there are no other available access routes--the route is necessary.

An implied grant of an easement can be illustrated by the same fact situation. Suppose "A" decided to sell the northern 20 acres instead of the southern 20 acres. "A" retains title and possession to the southern 20 acres over which the private road extends. If "A" did not grant an easement to "B" when title was conveyed to the northern acreage, the courts would probably approve an easement by implied grant.

The implied grant would require the same elements as the implied reservation. In other words, the easement must be apparent, permanent, continuous and necessary for "B's" use and enjoyment of the property.

There is some case authority that holds the courts will recognize an implied grant more readily than an implied reservation. The rule is based on the proposition that the law will imply an easement in favor of the grantee more readily than one in favor of the grantor. The proposition assumes that if the grantor intended to reserve any right over the property granted, he or she should have expressly done so in the deed. However, not all cases are uniform on this point.

Finally, an implied easement may arise by way of necessity. This easement differs primarily from the other two implied easements in that no prior existence or use of the easement is required. As the name implies, an easement of this nature arises only where routes of ingress and egress are completely non-existent.

VISUAL # 14
Conditions Necessary to Create
Implied Easement by Necessity

For an implied easement by way of necessity to arise, the following three conditions must be fulfilled. First, there must have been unity of ownership of the dominant and servient estates at the time of conveyance or at some prior time. Second, the easement must be absolutely necessary for the grantee to enter and leave the property. Third, the necessity for the easement existed at the time of the severance of the dominant and servient estates.

As to the element of unity of ownership, the land surrounding the land granted must be totally or partially owned by the grantor. If the land is totally surrounded by property owned by a third party who is a stranger to title, no way of necessity can arise. However, the right to an implied easement exists in the tenants and assigns of the grantee as against the tenants or assigns of the grantor. Thus if the dominant and servient estates have, at one time, been under common ownership (except for the sovereign), the possibility of an easement by necessity still exists.

Absolute necessity requires that there be no other passageway to and from the conveyed property. If the grantee can use another way either at the time of conveyance or thereafter, the right-of-way by necessity cannot be claimed. The mere showing that it would be more expensive or less convenient to obtain another outlet is not sufficient to give rise to this implied easement.

The issue of what constitutes absolute necessity has raised some interesting modern-day issues. For instance, any piece of property is accessible by air via a helicopter or parachute. Thus no tract of land is ever "absolutely" inaccessible. Yet no case has ever been found where an easement was denied due to its accessibility by air.

Likewise, if a tract of land is accessible only by navigable water, is it absolutely landlocked? Only 10 cases have been found where an easement was denied due to such accessibility. Of these, only two were decided since 1925; five were decided prior to 1900. Eight cases have been found that recognize an easement despite the existence of some form of access by water. All but one of these cases are decided after 1927. Although no cases in point appeared in Texas, the trend seems to be toward a more relaxed standard of "necessity."

Curiously enough, the law has not always been consistent regarding landlocked property in Texas. Prior to 1963, any person having land without an easement could statutorily condemn a private right-of-way to and from the property according to the Texas Revised Statutes Article 1377b(2). However, in 1963, the Texas Supreme Court held this statute contrary to Article 1, Section 17 of the Texas Constitution. Since then, the law has been repealed and landlocked landowners are relegated to the described rules regarding implied easement by way of necessity.

Just as the grantee can acquire an implied easement by way of necessity, so can the grantor. Should the grantor sell land completely surrounding a tract that he or she continues to own, the law allows the grantor to claim an implied easement by way of necessity. The servient estate in the hands of the grantee is charged with the burden.

Another way an easement may be created without written expression is by estoppel. Here the easement arises from the acts and/or oral expressions of the grantor which indicates the existence, creation or conveyance of an easement. Should the grantee rely on such demonstrations and accept the grantor's offer and be damaged thereby, the grantor will be estoppel (or legally prevented) from denying the existence of the easement.

VISUAL # 15
Easement by Estoppel

For example, suppose "A" wants to induce a buyer into purchasing a lot in an undeveloped subdivision. The prospect is shown a platted map with a roadway indicating a convenient access route to and from the lot. If the prospect should then purchase the lot, "A" would be legally precluded from asserting the non-existence of the easement.

The last way an unexpressed easement may be created is by way of prescription--sometimes referred to as "by way of limitations." Prescriptive easements arise in much the same manner as title accrues by adverse possession. The requirements basically are the same. The only difference is that adverse possession ripens into title to the land, whereas a prescriptive right matures into an easement.

VISUAL # 16
Basic Requirements for Prescriptive Easements

There are five basic requirements for a prescriptive easement. The absence of any one is fatal to the creation of the easement. First, the use of the land must be adverse to the owner of the land. In other words, the use must begin and continue without the actual or implied permission of the landowner. A use of the land with permission of its owner or under the privilege of a license can never mature into a prescriptive easement.

Second, the use must be open and notorious. This means the use must be asserted in such a manner to serve notice of the claim not only to the landowner but all persons in the immediate area. Secretive use is insufficient. A clear and positive use must be evident.

Third, the use must be exclusive. The use of an easement common with others or even with the owner is insufficient to create a private prescriptive right. This rule, however, is a rule of evidence raising a rebuttable presumption that permission

was given the claimant when both the owner and claimant use the easement concurrently. The rule does not apply where concurrent use by the owner and claimant occur after the prescriptive period has matured (i.e., the claimant has used the easement for 10 years).

Fourth, the use must be in the same place and within definite lines. The practice of passing over land in different places does not establish a prescriptive right except where the divergences are only slight. Also, the travel over unenclosed and unimproved land will not entitle the traveler to a prescriptive right unless the way is definitely marked.

Fifth, the use must be continuous and uninterrupted. The assertion of the enjoyment of the land cannot mature into a prescriptive right based on occasional passage. Likewise, anytime the adverse usage is interrupted, the running of the prescriptive period is annihilated and must begin a new. It has been held the placing of a fence across a road for a week to be sufficient to cause a discontinuous of use.

In Texas, the 3-, 5-, 10- and 25-year statutes dealing with adverse possession have been held inapplicable to the creation of prescriptive easements. The courts, however, have judicially placed the required period of continuous, uninterrupted adverse use for prescriptive easements at 10 years.

The courts have placed certain limitations and stipulations as to when the prescriptive period begins. For example, the period will not run if the owner of the servient estate is suffering under a disability such as infancy, insanity or the ward of the state when the adverse use begins. The period will run once the disability is removed. An intervening disability occurring after the period has started will not toll or suspend the running of the prescriptive period.

Perhaps the following example can illustrate better the above rules. Assume "A" inherits land. "A" is 16 years of age. The same year "B" begins crossing the land without A's permission. Since "A" is a minor, the prescriptive period will not commence. However, once "A" reaches the legal age of 18, the period will start to run.

An another example. suppose "A" inherits the land when "A" is 21 years of age. The same year "B" begins crossing the land without "A's" permission. Five years later "A" is adjudicated insane. Here the prescriptive period will continue to run. Intervening disabilities will not suspend the running of the 10-year period.

The courts have, in limited instances, applied the doctrine of tacking in cases involving appurtenant prescriptive easements. Tacking entails the adding of the periods of adverse use together when they are utilized by different people or entities. However, certain qualifications are necessary. (1) There must be no interruptions in the use between users. (2) The users must be successive owners of the dominant tenement. (3) The deed conveying title to the dominant estate must contain the following language: "together with all the singular the rights and appurtenances thereto in anywise belonging to the grantor." Now we know how private easements are created. Let's turn to how they are terminated.

VISUAL # 17
Qualifications for Tacking

Termination of Private Easements

Private easements may be extinguished in as many, or more, ways than they can be created. In fact, the manner in which some easements arise determines directly the means by which they can be terminated. Without going

into any great detail, the following is a brief synopsis of the various ways easements may be dissolved.

VISUAL # 18
Ways Easements may be Terminated

(1) Regardless of the method of creation, the most universal means of terminating an easement involves the conveyance of the servient estate to a purchaser who has neither actual nor constructive notice of the easement's existence prior to receipt of title.

Actual notice of an easement's existence may be imparted in one of two ways: (1) by oral or written representations, or (2) by physical evidence existing on the property at the time of conveyance. For instance, purchasers are charged with knowledge of an easement where a visible inspection would reveal sufficient evidence to cause a person to question the easement's existence. Where material objects and structures such as roads, wires, poles, substations and the like are located on or connected to the property, the inference prevails that notice has been imparted.

Constructive notice may be given by having the easement recorded in the county land records in compliance with Article 1289 of the Texas Revised Statutes. If so, the purchaser is charged with such knowledge regardless of whether or not the land records are examined. Thus, prospective purchasers should visibly inspect the property and have the title examined to determine existence of easements.

Easements arising without written expression have inherent problems whenever the servient estate is transferred. Since there is not written document to record, the only way knowledge can be given to the prospective buyer is by actual notice. Consequently, all easements should be placed in writing and recorded preserve their existence.

For instance, consider the opening example involving Mark and John. Most likely Mark will lose the easement because it was never recorded. The new purchasers probably took title to the servient estate without actual or constructive knowledge of the easement. Even if the purchasers had actual knowledge, the easement could not survive Mark's death. Oral easements in gross are non-transferable as mentioned earlier.

(2) Easements may be extinguished by operation of law. The foreclosure on delinquent promissory notes secured by a mortgage or deed of trust on real property will terminate all easements created subsequent to the mortgage being placed on the land. The first in time prevails in such an instance.

Likewise, condemnation will terminate all easements which exists across the condemned land. The rights of the public in condemned property are paramount to an individual's right to an easement across the same property.

(3) Easements may be extinguished by abandonment. Abandonment takes place whenever cessation of use occurs accompanied by a clear intent never to use it again. Mere nonuse does not constitute abandonment. However, the intent may be inferred from the circumstances if such evidence is clear and definite.

(4) Noncompliance by the grantee with a condition of the grant is another way an easement may terminate. However, the condition must be explicitly coupled with a right of forfeiture. For example, an easement will terminate where it is conditioned upon the Grantee's using the easement the grantee within a stipulated period of time. Also, the failure of the grantee to pay half of the upkeep of the easement is another example of a conditional easement.

(5) As mentioned earlier, the merger of the dominant and servient tenements under a common owner terminates all appurtenant easements between the two estates.

(6) The expiration of the designated number of years in a grant will extinguish a term easement. For example, an easement granted for a term of 15 years expires automatically at the end of the designated 15-year period.

VISUAL # 19
Ways Easements may be Terminated (cont)

(7) Adverse possession of an easement by the servient tenement for 10 continuous years will terminate an easement. For instance, suppose "A" grants "B" a right-of-way easement in 1950. The easement leads to some property recently acquired by "B." "B" intends to live on the property following retirement. In 1970, "B" retires. However, in the meantime, "A" has not only erected a fence across the easement but also a barn and catch pens. Other portions of the easement have been plowed and placed in cultivation.

In such an instance, the easement granted in 1950 may have terminated if it has been "actually and visibly appropriated, commenced and continued under a claim of right inconsistent with and hostile to the claim of 'B'," as described in Article 5510 of the Texas Revised Statutes. The character of the claim must indicate unmistakenly an assertion of exclusive ownership in "A" for 10 consecutive years.

(8) The removal of the purpose or reason for creating an easement will terminate it. For example, an easement granted explicitly for the construction of a reservoir will terminate whenever the construction is completed. An easement granted to serve a particular oil well will expire when the well ceases production.

(9) The misuse of an easement generally will not cause the easement's

termination. Also, the use of an easement for an unauthorized purpose or in an excessive manner is not sufficient to cause a forfeiture. Misuse can result in termination where the misuse creates an impossibility to use the easement for the purpose originally granted. However, such abuses do give rise for damages on the part of the servient tenement.

(10) A change in condition may also extinguish certain easements. For example, an "implied easement by way of necessity" is only a temporary right. It continues only so long as the necessity exists. Should the necessity dissipate, so will the easement.

(11) Lastly, an easement can terminate by a release being granted from its owner. However, the release should be placed in writing and recorded in the county land records. If not, serious title problems could result in the future.

In fact, the latter point cannot be overemphasized. Regardless of how an easement is extinquished, a carefully written release should be prepared, signed by the party granting the release and placed in the county land records. Otherwise, subsequent conflicts may arise disputing the easement's continued existence.

Summary of Private Easements

This handout provides a synopsis of the minimum requirements necessary for the creation and termination of the various private easements. Each of the private easements will be either an easement in gross or an appurtenant easement. An easement in gross is one owned by a private individual or a business entity. An appurtenant easement is one that attaches to a certain piece of property and not to any individual or business entity.

HANDOUT A
Categories of Private Easements

VISUALS FOR PART 1: PRIVATE EASEMENTS

WHAT IS AN EASEMENT?

- Right or priviledge in real property
- Distinct from ownership

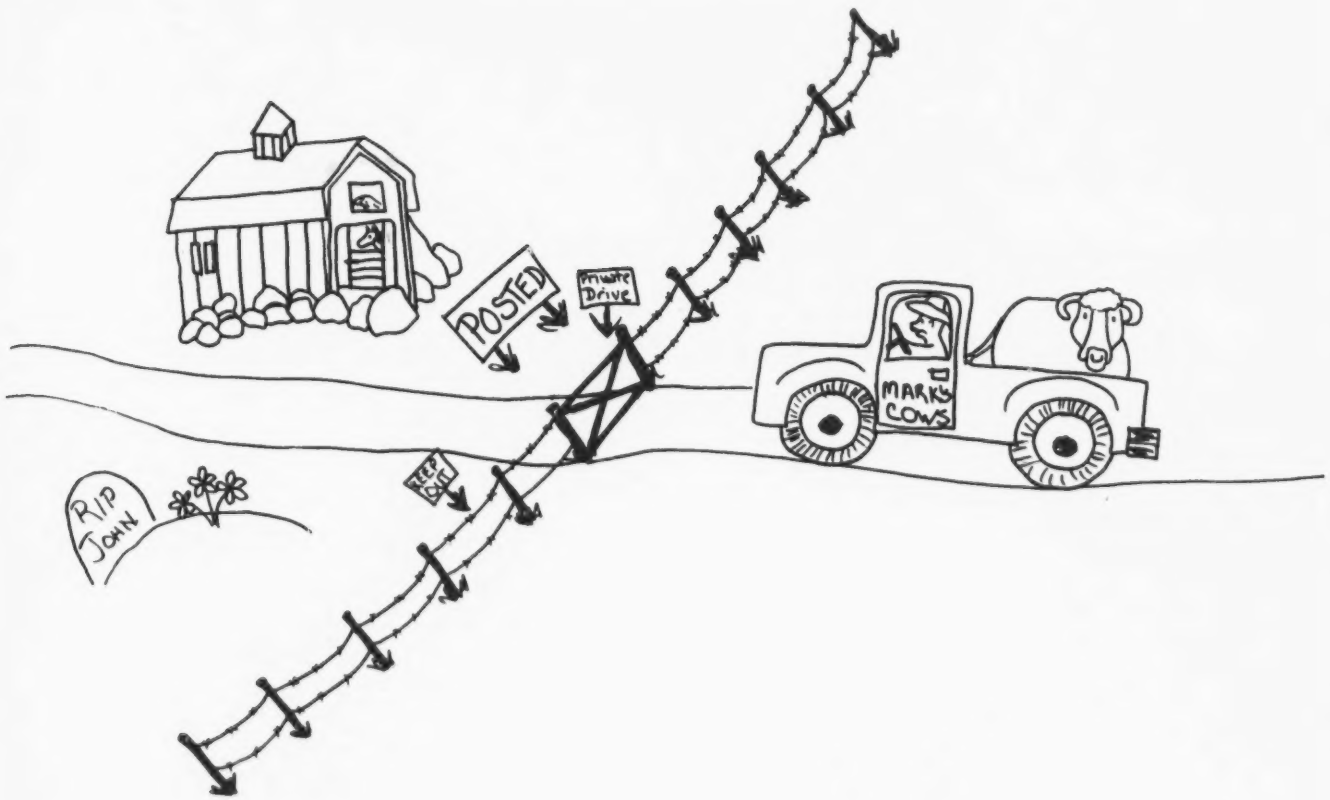
WHAT IS A LICENSE?

- Permission given to do some act or acts on land of another
- Need not be in writing, generally revocable
- Example: sporting event ticket

CATEGORIES OF EASEMENTS

- *Private:* one or few individuals
- *Public:* general public

IMPORTANCE OF PRIVATE EASEMENTS



CAVEAT ON PRIVATE EASEMENTS

CAUTION:

Private easement must be *documented* and *recorded* carefully

TWO GROUPS OF PRIVATE EASEMENTS

In Gross:

- Owned by business or individual
- Generally cannot be assigned or transmitted
- Terminates upon death of owner or demise of business

Appurtenant:

- Attached to particular tract
- Easily transferable

ESTATES IN APPURTENANT EASEMENTS

Dominant Estate:

Right to use easement across another's property

Servient Estate:

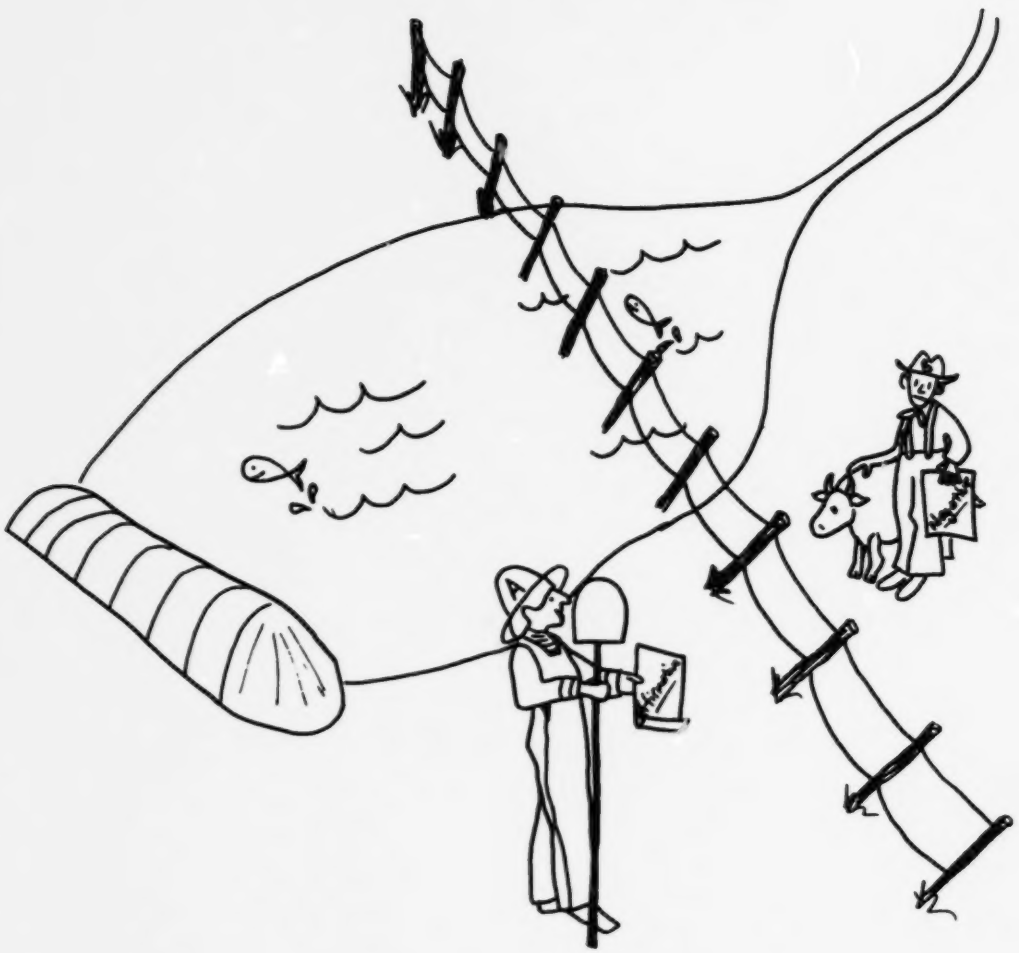
Property burdened by easement

CLASSIFICATION OF APPURTENANT EASEMENTS

Affirmative Easement:
Gives dominant estate owner right to use easement across servient estate's land

Negative Easement:
Restricts use of servient tenement's land

AFFIRMATIVE AND NEGATIVE EASEMENTS



WAYS EASEMENTS MAY ARISE WITHOUT WRITTEN EXPRESSION

- Implication
- Estoppel
- Prescription

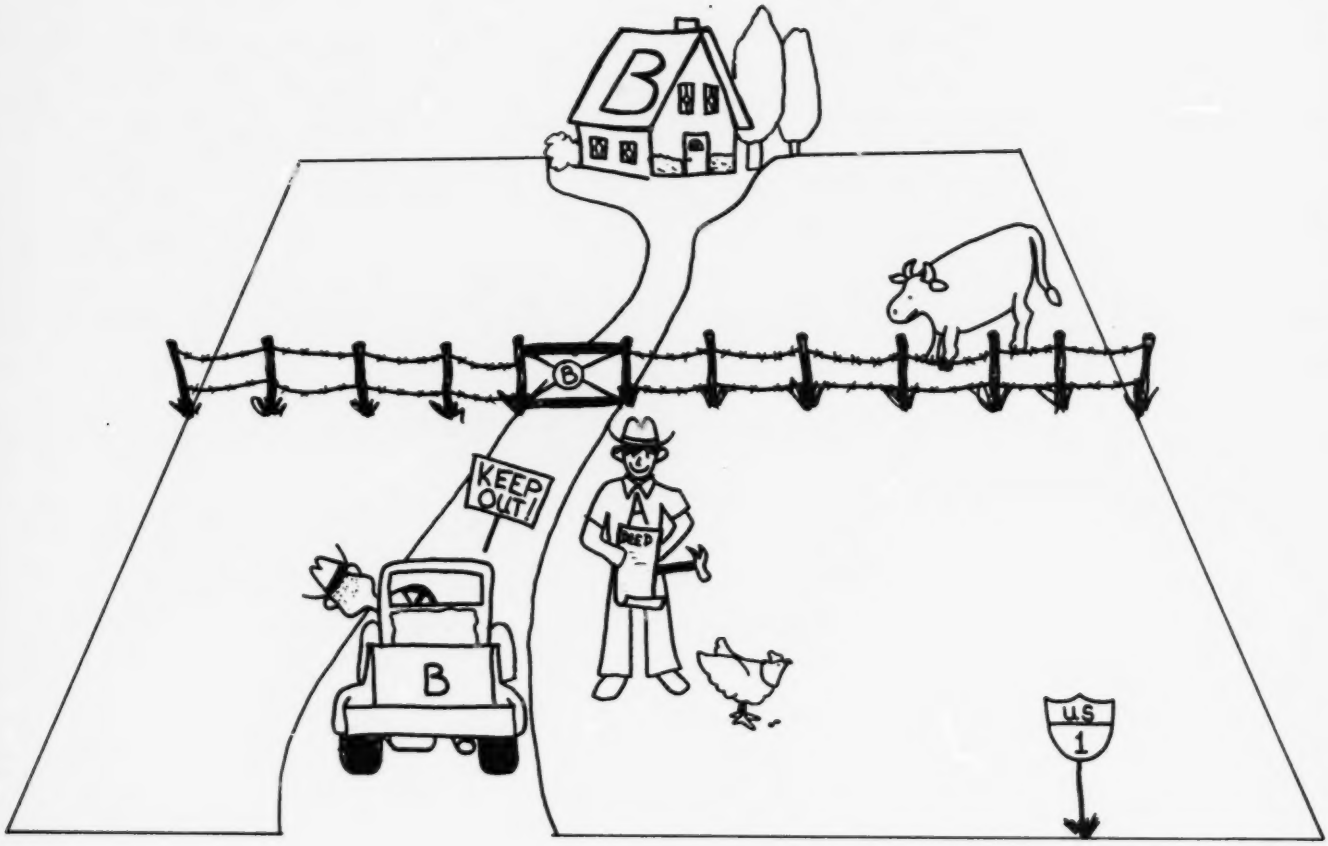
EXCEPTIONS TO WRITTEN REQUIREMENTS

- Grantee paid consideration
- Grantee takes possession
- Grantee made valuable, permanent improvements with grantor's consent

CREATING IMPLIED EASEMENTS

- Implied reservation
- Implied grant
- Way of necessity

EXAMPLE OF IMPLIED EASEMENT



CONDITIONS NECESSARY TO CREATE IMPLIED EASEMENT BY NECESSITY

- Unity of ownership of dominant, servient estates
- Absolutely necessary for grantee to enter and leave property
- Necessity for easement existed at time of severence of dominant and servient estates

No prior existence or use of easement required

EASEMENT BY ESTOPPEL

Acts and/or Oral Expressions of Grantor that Indicate:

- Existence
- Creation
- Conveyance

of an Easement

Grantee relies on representations by purchasing property

BASIC REQUIREMENTS FOR PRESCRIPTIVE EASEMENTS

Use of Land Must Be:

- Adverse to owner
- Open, notorious
- Exclusive
- Same place, within definite lines
- Continuous, uninterrupted

QUALIFICATIONS FOR TACKING

- No interruption in use between users
- Users must be successive owners of dominant estate
- Document conveying dominant estate must contain specific language

WAYS EASEMENTS MAY BE TERMINATED

- Conveyance of servient estate to purchaser who has neither actual or constructive notice of easement
- Operation of law
- Abandonment
- Non-compliance by grantee with a condition in grant
- Merger of dominant, servient estates under common owner
- Expiration of a designated number of years in a term estate

WAYS EASEMENTS MAY BE TERMINATED (CONTINUED)

- Adverse possession by servient tenement for 10 continuous years
- Removal of purpose or reason for creating easement
- Misuse does not terminate an easement
- Changes in conditions
- Release granted from owner

Handout for Part 1: Private Easements

TYPES OF PRIVATE EASEMENTS

Minimum Requirements	Implied Reservation	Implied Grant	By way of Necessity	By Estoppel	By Prescription
Prior Existence	X	X			
Prior Use	X	X			
Apparent	X	X			X
Permanent	X	X			X
Continuous	X	X			X
Necessary	X	X	X		
Prior Unity of Ownership			X		
Open and Hostile					X
Without Permission					X
Exclusive					X
Uninterrupted for 10 yrs.					X
Reliance by Purchasing				X	X

Part 2: Public Easements

Landowners may not realize the consequences of inviting the public to use their property. Take the Philmores for example. To help relieve some of the danger of having the children travel on the side of the street, the Philmores constructed a sidewalk on their property. The children began using the sidewalk but the Philmores failed to anticipate the adverse effects. The children caused the family dog to bark, the paper was generally missing each morning and minor acts of vandalism occurred on their property.

VISUAL # 1
Public Easements

The Philmores finally decided to revoke the privilege by having the sidewalk dismantled. However, they were served with a restraining order by the city attorney's office preventing its removal. It was the city's contention that the Philmores had dedicated the public an irrevocable easement across their land.

Public easements, are those easements to which the right of enjoyment and use are vested in the public generally or in an entire community. There are three ways public easements may be created. Each method is unique and has different requirements. The three ways public easements may arise are: (1) by dedication, (2) by prescription and (3) by condemnation.

VISUAL # 2
Public Easements may be Created By:

Dedication is perhaps the most common means by which public easements arise. Dedication is defined as a method of creating or transferring an interest in land, consisting of an easement only and not title. Dedication entails the devoting or giving property, or an interest therein, for some proper object. It is a voluntary transfer that does not require consideration.

There are two distinct types of dedication--statutory and common law. Both types require an intent on the part

VISUAL # 3
Types of Dedication

of the owner to dedicate (or set apart) the easement and a reciprocal acceptance of the easement by the public generally, by the governing body of a municipality or by the county.

Statutory dedication is the simplest of the two to explain. As the name implies, statutory dedication must be carried out in compliance with all relevant statutory law. The procedure is described in the Texas Civil Statutes in Article 974(a) for urban areas and Article 6626(a) for rural areas. Basically Article 974(a) requires the following:

1. The land must be situated inside the corporate limits or be within five miles thereof.

2. The owner of the land must intend to lay out a subdivision, an addition to the city, suburban lots, building lots or any lot, street, alley, park or some other portion for public use.

3. The owner must accurately describe the proposed subdivision or addition by metes and bounds in a plat. The plat must contain precise dimensions of all the proposed streets, alleys, squares, parks or other portions intended to be dedicated to public use.

4. The plat must be acknowledged by the owner and filed for approval with the City Planning Commission of the city (if there is one) or with the governing body of the city.

5. If the plat conforms to the general plan of the city, then it shall be approved. If the relevant body does not act on

HANDOUT A

Texas Law Concerning Statutory Dedication of Urban Areas

the proposal within 30 days, it is automatically deemed approved.

6. Once approved, the plat is filed of record in the county in which the land lies.

The plat manifests the owner's intent to give appropriate easement to the public in the proposed streets and public areas. The approval of the plat, however, does not indicate the city's acceptance of the easements. According to Article 974(a) (6) of the Texas Revised Statutes, "The approval of any such plan, plat, or replat shall not be deemed an acceptance of the proposed dedication and shall not impose any duty upon such city concerning the maintenance or improvement of any such dedicated parts until the proper authorities of said city shall have made actual appropriation of the same by entry, use or improvement."

Article 6626(a) applies to subdivision plats filed in counties having a population of less than 190,000 according to the last preceding federal census and where the proposed subdivision lies outside the corporate limits of any city in the State of Texas.

Basically Article 6626(a) requires the following steps for statutory dedication:

1. The developer shall have a plat made of the proposed subdivision describing it by metes and bounds and giving the dimensions of all proposed lots, streets, alleys, parks or other portions intended to be dedicated to public use.

2. The plat shall be duly acknowledged and recorded in the office of the county clerk in which the land lies.

HANDOUT B

Texas Law Concerning Statutory Dedication of Rural Areas

3. Section 3 of Article 6626(a) permits the Commissioners Court of any such county to adopt certain specified standards for the width and cut of the roads, to promulgate reasonable specifications concerning the construction of the roads and the drainage thereof, and to require bonds and sureties of the developer to insure compliance.

4. Article 6626(c) of the Texas Revised Statutes states that no party shall file or record any map or plat of a subdivision without first securing approval as provided by law. Thus if any restrictions are imposed by the Commissioners Court, they can be enforced by requiring prior approval.

There is no article similar to Article 974(a)(6) stating when official acceptance of a plat occurs pursuant to this statute.

Common law dedication, on the other hand, is not as easy to explain. However, the offer by the owner and the acceptance by the public is still required. The problems generally focus on how and when a valid offer has been made.

There are <u>two types of common law dedication--express and implied. With either, there must be an appropriation (or setting aside) of the land for public use</u>. In the case of express dedications, there must be some manifestation, either in writing or orally, of the owner's desire to devote the land to public use. With an implied dedication, some act or course of conduct must occur from which the law will imply an intent to dedicate.

<u>Visual # 4</u>
Two Types of Common Law Dedication

VISUAL # 5
Four Elements of Common Law Dedication

All common law dedications require the following four elements: (1) a person competent to dedicate, (2) a public purpose served by the dedication, (3) an offer or tender of the dedication and (4) an acceptance of the offer or tender.

As to the element of capacity, any person having the capacity to make a grant of land has the capacity to make a valid dedication. However, in addition to having the capacity to dedicate, the person also must own an unqualified and undivided fee title to the land. A co-tenant cannot make a valid dedication without the joinder of the other co-tenants.

As to the element of public purpose, the dedication must be for a use beneficial to the public and not prohibited by statute. If the easement is reserved for a specific group, then there is no public purpose involved and no dedication of a public easement can occur.

As to the element of the offer or tender, it must be based on a manifest desire of the landowner to devote the land to a public use. If there is no intent, there can be no offer.

The intent to dedicate must be based on a clear, unequivocal act or declaration of the landowner. A secret intent is insufficient. The courts will presume an intent in very limited situations.

The intent also must be unqualified. The intent must be such that the public has an irrevocable right to enjoy the property, independent of any whim of the landowner, and beyond recall. The intent must be to divest the owner of the interest immediately and not at some future time. However, it is not necessary that the owner intend immediate use by the public.

The manner in which the offer is communicated to the public determines whether or not it constitutes an express or implied common law dedication. Whichever way is used, both the manifestation and communication must be so clear and convincing that a reasonable person would be induced to act in reliance thereon.

If the dedication is expressed, it may be declared either orally or placed in writing. Perhaps the oral declaration is the weaker of the two. It has been held that oral declarations may be, in and of themselves, sufficient to constitute an offer of dedication. However, as a general rule, oral declarations serve only to explain the conduct of the owner. For instance, in one case, a developer made casual comments about his intent to place streets and alleys at a certain place within a proposed subdivision. Later, when the developer began selling the lots, he did so by making references to a map where the suggested streets and alleys were omitted. Here the courts maintained the references to the map canceled the prior casual comments.

Written expressions of intent to dedicate take place more often than oral representations. It is important to remember that the statute of frauds has been held inapplicable to this type of transfer. Thus, it is not mandatory that the dedication be placed in writing to become effective.

Generally, the written expression of intent will appear either in a dedicatory deed or incorporated in a proposed plat. If the intent is embodied in a dedicatory deed, the deed may name either a city or the public generally as the grantee. The mere fact the deed does not meet the requirements of conveyance set forth in Articles 1288 and 1292 of the Texas Revised Statutes is irrelevant since a written dedication may be shown by a simple contract.

Plat designation is the most common form of a written dedication. It can occur where the owner lays out a town site or an addition to a town or city on a plat and delineates the proposed streets, parks or other public places. It also can occur where any part of a town site or addition is sold by reference to a plat containing designated public (not private) areas.

If the dedication takes the form of a map or plat, it generally is necessary to record or file the plat to establish effective communication of the offer to the public. If recorded, it constitutes an unequivocal offer of dedication.

Note: As long as the plat or map has not been recorded, a common law dedication is possible. If, however, the plat or map is recorded, it must be done in compliance with Article 974(a) or 6626(a) as mentioned earlier. Such recording constitutes a statutory dedication, not a common law one. Most dedications in Texas via a map or plat are statutory.

Effective communication can be established without recording by placing the plat in the possession of public authorities such that it is readily accessible to the general public. The exhibition of the plat merely to private persons will create a private easement by estoppel as mentioned earlier but not a public easement.

Implied common law dedications may be communicated to the public in two ways. One is by the affirmative acts of the owner; the other by inactions or acquiescence on the owner's part.

VISUAL # 6
Implied Common Law Dedications are Communicated By:

If affirmative acts are the means of communication, the acts must amount to an invitation or encouragement to the public to use the land. For instance, opening property to public use or even fencing off part of the land and making repairs thereon convenient for the

public's use have been held sufficient affirmative acts to give rise to an implied dedication.

Inactions or acquiescence sufficient to give rise to an implied dedication is more difficult to ascertain. However, by disregarding certain private interests for a considerable length of time, a landowner may have dedicated land for public use by implication. Allowing the public to use a strip of land without objections serves as a good example. The landowner may not deny the implications.

The duration of the owner's inactions or acquiescence is important only when the attitude or intent cannot be clearly ascertained. For example, where a landowner silently permits the public authorities to grade, repair or otherwise improve a private road, such inactions have been held sufficient evidence to establish an implied intent to dedicate.

When the attitude or intent cannot be established, the period of the use then becomes more important. The courts will "presume" an intent if the period of inactions extends for several years. Generally a 10-year period is used, but 50-, 40-, 35-, 20-, 8- and 6-year periods also have been adhered to be the courts.

Before indulging in any presumptions, the courts must examine the existing evidence as to the owner's attitude and the general character of the land used by the public. For instance, if permission was given to cross the land, the owner must have intended it to be permanent, not temporary, and it must have extended to the public generally and not to a select few individuals.

Likewise, mere use by the public is not in and of itself sufficient to disclose an intent to dedicate. This

fact is particularly true when the public use does not interfere with the owner's use of the property. Thus, the owner has no occasion to declare overtly his or her intentions in the matter. No intention to dedicate can be ascertained where the use is promiscuous, occasional or undefined. No public easement can arise where the use is confined to a particular class of persons as distinguished from the public generally.

Finally, to complete the dedication, the offer or tender of the use must be accepted by, or on behalf of the public. Acceptance must take place within a reasonable time after the tender but before it is revoked.

Until the tender is accepted, no rights vest in the public and the offer of dedication may be revoked. Also, the offer may lapse by the expiration of a designated time period imposed by the owner. Revocation also can occur by the owner's devoting the property to some inconsistent use or by vacating a filed plat in accordance to Article 974(a)(5) or Article 6626(d) of the Texas Revised Statutes as will be discussed later.

Anything done by the public that shows an unequivocal intent to appropriate the property to the purpose for which it was set aside is sufficient to constitute a binding acceptance. Once accepted, the dedication becomes immediately operative. The owner becomes divested of all rights in the property consistent with the purpose to which the easement was dedicated.

The acceptance may be either formal or informal. In most instances an informal acceptance transpires. The following are some examples of cases where informal acceptances have occurred: (1) establishing roads, streets and alleys by a city in conformity to the plat filed by the owner, (2) purchasing land by individuals relying on the existence of

VISUAL # 7
Acceptance of Dedicated Public Easements

a valid dedication, (3) taking possession of, or assuming control over, the dedicated land and improving or repairing it, (4) failing to assess property taxes against the dedicated land and (5) using the dedicated land by the public.

The purchasing of land by individuals relying on the existence of a valid dedication (example no. 2 above) needs further amplification due to its unique interpretation in Texas. Under Texas case law, it is possible for a private easement and a public easement to exist simultaneously on the same roadway or thoroughfare. Example No. 2 represents this situation.

As mentioned earlier under private easements, an easement by estoppel may arise whenever a purchaser relies on a map or plat for the placement of easements. If the same map or plat is filed in the county land records, and if the city or county accepts the dedication, a public easement arises also along the same route. Each easement is independent of the other. Each easement has separately vested rights; each must terminate independently.

The second way public easements may be created is by prescription. There appears to be only one major difference between the requirements for creating a public prescriptive easement and a private one. The difference is that a private easement requires one or a few individuals to continuously use the land for 10 years, while a public easement requires a similar use by the public generally.

VISUAL # 8
Public Prescriptive Easements

All the other requirements remain the same. The use of the land must be hostile and adverse to the owner of the land. The use must be open and notorious. The use must be exclusive. Finally, the use must be continuous and uninterrupted for 10 years.

There is a unique statutory twist of the law dealing with public prescriptive easements. According to Article 5517 of the Texas Revised Statutes "...no person may acquire by adverse possession any right or title to any part or portion of any road, street, alley, sidewalk or grounds which belongs to any town, city or county or which have been donated or dedicated for public use..." In other words, the public can gain a public prescriptive easement across private land but a private individual or individuals cannot gain a private prescriptive easement across public land.

There also are two important rules regarding public prescriptive easements which have been established by case law. First, a public prescriptive easement cannot arise where the use by the public is merely for pleasure and recreational purposes. Such uses are not for general travel and thus do not constitute adverse usage which would notify the owner of the land being used or claimed by another.

VISUAL # 9
Two Rules Regarding Public Prescriptive Easements

The other proposition is that the use must be exclusive and not shared by the owner. If the enjoyment is consistent with the right of the owner, it confers no rights in opposition to such ownership.

It should be noted here that there is a big difference between acquiescence as used in association with implied dedications and prescriptive easements. Here are the two major differences: (1) acquiescence assumes the owner intended to dedicate the land by his or her inactions; prescriptive easements assume the owner at all times objected to the public use of the land and (2) acquiescence requires some public use during the period; prescriptive easements require continuous use for entire 10 years.

VISUAL # 10
Differences

The third and last way for a public easement to arise is by way of condemnation. Condemnation is the procedure by which private land is taken for a public purpose. The power is generally lodged in the federal and state governments. In Texas, the legislature has delegated the power to various agencies and subdivisions of the state such as counties, cities, towns and villages.

There are certain legal restraints placed on the condemnation process. For instance, (1) the taking must be to achieve some public purpose, (2) the condemnor cannot condemn more land than is necessary for the undertaking, (3) the landowner must be reimbursed just or adequate compensation for the taking and finally, (4) the process must be carried out in compliance with due process of the law. The precise procedure is contained in Title 52, Articles 3264 through 3271 of the Texas Revised Statutes.

VISUAL # 11
Legal Restraints on Condemnation

Without going into any detail, the following chart contains a brief synopsis of the entities and accompanying empowering statutes permitting the condemnation of public easements in Texas. The list is not necessarily inclusive of all relevant statutes.

VISUAL # 12
Enabling Condemnation Statutes

	Entity	Empowering Statute
1.	Texas Highway Department	Article 6673e-1
2.	Incorporated cities and and towns	Article 1107(1) and (7), and Article 1149
3.	County Commissioners Court	Article 6703 and Article 6674n-2

The chart does not contain the statutes granting railroads, pipeline and utility companies the right to condemn easements. The purpose of the omission is twofold. First, the easements permitted under the pertinent

statutes are not for public thoroughfares. The other reason is that the subject is covered in depth in the Texas Real Estate Research's technical report no. 394 entitled "Understanding the Condemnation Process in Texas."

Now, let's consider the termination of public easements.

Termination of Public Easements in Texas

The means by which public easements terminate are quite limited. In fact, the abandonment of the easement and the statutory vacating of a dedicated plat are the only two sure means of dissolving public easements.

VISUAL # 13
Means of Termination

As with the abandonment of private easements, the party asserting the abandonment must show by clear and satisfactory evidence that (1) acts of relinquishment or cessation of use have transpired and (2) the intent to permanently relinquish the use is present. As before, the difficulty is ascertaining the intent of the public to permanently cease use. Mere disuse is insufficient. The county's failure to open up streets for 42 years after the dedication occurred has been held insufficient to establish abandonment. Likewise, the negligence of county officials to keep the right-of-way clear of advertising signs and other obstructions falls short of indicating an intent to abandon a portion of a right-of-way.

The courts have held an abandonment can occur in one of the following two situations: (1) when the use of the land becomes practically impossible or the purpose of the dedication wholly fails or (2) when some affirmative act or acts clearly show an intent to permanently relinquish the use to which the property was dedicated.

VISUAL # 14
Court Decisions

Perhaps some actual case examples can illustrate better these rules. As to the first rule, two cases stand clearly in point. The first case arose in a proposed subdivision on the outskirts of Corpus Christi in 1890. A developer proposed to open a huge subdivision along the coast. The plans, maps and plats were drafted and filed of record. Streets and public areas were indicated on the plats. However, the project collapsed after its inception. The land was turned back into agricultural uses. Later, certain persons in the subsequent chain of title wanted the proposed streets and public areas established.

Here the court held that the evidence, taken as a whole, discloses a complete abandonment of the proposed enterprise in all its essential features which amounted to a destruction of the general scheme and purpose. This being true, a condition exists where "the object of the use for which the property was dedicated wholly fails."

The other case involved a dead-end road less than a mile long. The courts held an abandonment had occurred when the county undertook the following two projects at the road's intersection with the main highway. First, a culvert was placed in the center of the main highway so that one end of the culvert opened directly in the center of the intersecting road. Next, bar ditches were so dredged along with main highway making it impossible to enter or leave the road in question. Here, the courts held the use of the land had been rendered practically impossible for its intended use.

As to the second rule, again two cases serve as prime examples. The first case occurred in Travis County, Texas. It involved a public use project. The state dedicated certain land to the county as a site for a

courthouse and jail. The courthouse and jail were erected and maintained on the site for several years. The buildings were then abandoned when a new courthouse and jail were built at another location. Such acts were held to show clearly an intent to permanently abandon the site.

The other case is more complicated. A developer filed in the county records a plat showing a main thoroughfare running through a proposed subdivision. As the subdivision developed, the primary thoroughfare emerged on a parallel street about a half mile away. The proposed thoroughfare was never opened. It was kept fenced without objections for 20 years and never used by the public. Here, evidence was sufficient to show an abandonment of the street by the county. Possibly, the courts could have ruled that the streets had never been accepted by the public generally or by the county.

In situations where it is possible for a private and public easement to co-exist along the same route, the courts noted that each easement must be terminated on its own merits. The courts stated in the above case that the controversy did not involve the rights of the purchasers who had bought property in the addition in reference to the recorded plat. The private rights were separate and distinct from the rights of the county and the general public. Thus, the private rights to an easement cannot be prejudiced by any abandonment or refusal to accept the dedication on the part of the county.

Again, referring to the example involving the Philmores' sidewalk, in all probability the restraining order would be upheld. The sidewalk cannot be removed by the Philmores if the court finds that a valid dedication and acceptance have occurred. There appears to be insufficient evidence to reveal an abandonment in this instance.

Vacating a dedicated plat also can terminate public easements. The procedure required for the cancellation depends on whether or not the original plat was filed pursuant to Article 974(a) or Article 6626(a) of the Texas Revised Statutes.

If Article 974(a) was the enabling statute, the requirements vary depending on whether any sales of lots have occurred. If no sales have transpired, the developer must get the City Planning Commission or the governing body of the city to approve the proposed cancellation. If so, a written instrument declaring the cancellation of the plat or any part thereof shall be executed, acknowledged and recorded in the same office as the original plat.

Should sales have already occurred in the subdivision, the procedure remains basically the same. The only difference is that the original petition to cancel all or a part of the plat must be filed by all the owners of the lots in the subdivision.

If the original plat was filed pursuant to Article 6626(a) of the Texas Revised Statutes, then the entity owning the land must file an application to cancel all or any part of the subdivision with the commissioners court of the county where the land is located. The commissioners court will cause a notice to be published in a county newspaper for three weeks preceding any action. The notice shall command any interested party desiring to protest the cancellation to appear at a specified time.

At the hearing, if no one protests, and if it can be shown that the cancellation will not interfere with the established rights of any purchaser in the subdivision, then the commissioners shall give the owner permission to file the proposed cancellation in the land records of the county. Should the

cancellation interfere with the established rights of purchasers, the cancellation may still be approved if the person or persons so adversely affected agree to the action.

Summary of Public Easements

Handout C
Types of Public Easements

This handout contains a summary of the requirements necessary for the creation of public easements. Most of the chart depicts the requirements for easements arising by dedication. Under any form of dedication, there must be an intent on the part of the owner to dedicate the easement and a reciprocal acceptance of the easement by the public generally, by the governing body, a municipality or by a county. Therefore, the first part of the chart is devoted to the various ways offers are tendered followed by the various ways they may be accepted.

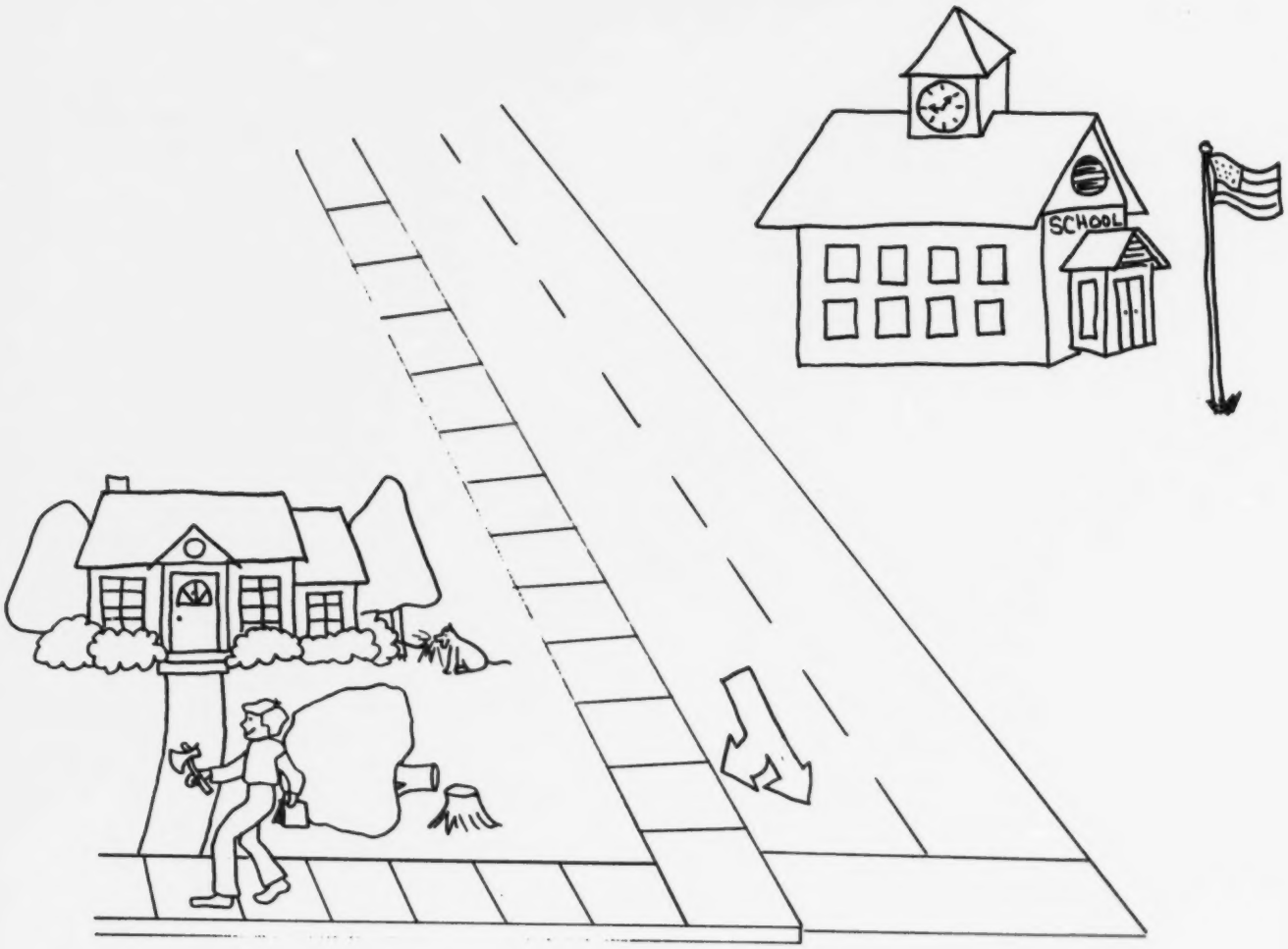
Conclusion

The importance of private and public easements cannot be overemphasized in today's society. They play a vital role in everyone's life.

Most controversies associated with easements focus on when the easements arise and when they terminate. Both the statutory and case law in Texas contain a great deal of information on the subject. This presentation has attempted to explain these laws. However, it will not substitute for competent legal counsel.

Visuals for Part 2: Public Easements

PUBLIC EASEMENTS



PUBLIC EASEMENTS MAY BE CREATED BY:

- Dedication
- Prescription
- Condemnation

TYPES OF DEDICATION

Statutory

In compliance with relevant statutory law

Common Law

- Express
- Implied

TWO TYPES OF COMMON LAW DEDICATION

- Express
- Implied

FOUR ELEMENTS OF COMMON LAW DEDICATION

- Person competent to dedicate
- Public purpose served by dedication
- Offer or tender of dedication
- Acceptance of offer or tender

IMPLIED COMMON LAW DEDICATION

COMMUNICATED BY:

Affirmative Acts of Owner:

- Must amount to invitation or encouragement to public to use land

Inactions or Acquiescence on Owner's Part:

- Ascertained by circumstances

ACCEPTANCE OF DEDICATED PUBLIC EASEMENTS

Formal: least common

Informal: most common

- Establihsing roads by a city in conformity to a plat filed by landowner/subdeveloper
- Purchase of land in reliance on existance of valid dedication
- Taking control over dedicated land and improving or repairing it
- Failing to assess property taxes
- Use of dedicated land by public

PUBLIC PRESCRIPTIVE EASEMENTS

Major Difference Between Private and Public Prescriptive Easement

- Private prescriptive easement requires one or few individuals to continuously use land for 10 years
- Public prescriptive easement requires continuous use of land by public for 10 years

TWO RULES REGARDING PUBLIC PRESCRIPTIVE EASEMENTS

- Cannot arise if used by public for pleasure/recreation
- Use must be exclusive, not shared by owner

DIFFERENCES

Acquiescence

- Implied dedication assumes owner intended to dedicate by inactions
- Requires some public use

Prescriptive Easement

- Assumes owner objected to public use
- Continuous public use for an entire 10-year period

LEGAL RESTRAINTS ON CONDEMNATION

- Taking achieves some public purpose
- Condemnor cannot condemn more land than necessary
- Landowner must receive adequate compensation
- Procedure must follow due process of law

ENABLING CONDEMNATION STATUTES

Entity	*Enpowering Statute*
Texas Highway Department	Article 6673e-1
Incorporated cities, towns	Article 1107 (1) and (7), and Article 1149
County commissioners court	Article 6703 and Article 6674n-2

MEANS OF TERMINATION

For Abandonment of Easement, Must Show:

- Acts of relinquishment, cessation have occurred
- Intent to permanently relinquish

Statutory Vacating of a Dedicated Plat

COURT DECISIONS

Abandonment May Occur When:

- Use of land becomes practically impossible or purpose of dedication wholly fails
- Affirmative act or acts clearly show intent to permanently relinquish use to which property was dedicated

Handouts for Part 2: Public Easements

Texas Law Conerning Statutory Dedication of Urban Areas

1. The land must be situated inside the corporate limits or be within five miles thereof.

2. The owner of the land must intend to lay out a subdivision, an addition to the city, suburban lots, building lots or any lot, street, alley, park or some other portion for public use.

3. The owner must accurately describe the proposed subdivision or addition by metes and bounds in a plat. The plat must contain precise dimensions of all the proposed streets, alleys, squares, parks or other portions intended to be dedicated to public use.

4. The plat must be acknowledged by the owner and filed for approval with the City Planning Commission of the city (if there is one) or with the governing body of the city.

5. If the plat conforms to the general plan of the city, then it shall be approved. If the relevant body does not act on the proposal within 30 days, it is automatically deemed approved.

6. Once approved, the plat is filed of record in the county in which the land lies.

Texas Law Concerning Statutory Dedication of Rural Areas

1. The developer shall have a plat made of the proposed subdivision describing it by metes and bounds and giving the dimensions of all proposed lots, streets, alleys, parks or other portions intended to be dedicated to public use.

2. The plat shall be duly acknowledged and recorded in the office of the county clerk in which the land lies.

3. Section 3 of Article 6626(a) permits the Commissioners Court of any such county to adopt certain specified standards for the width and cut of the roads, to promulgate reasonable specifications concerning the construction of the roads and the drainage thereof, and to require bonds and sureties of the developer to insure compliance.

4. Article 6626(c) of the Texas Revised Statutes states that no party shall file or record any map or plat of a subdivision without first securing approval as provided by law. Thus if any restrictions are imposed by the Commissioners Court, they can be enforced by requiring prior approval.

TYPES OF PUBLIC EASEMENTS

Minimum Requirements	Statutory Dedication	Implied Common Law Dedication	Express Common Law Dedication	Prescriptive Easement	Easement Condemnation
OFFERS:					
Oral			X		
Written			X		
Plat	X		X		
Affirmative Acts		X			
Acquience		X			
ACCEPTANCES:					
Some public use	X	X	X		
Continuous public use (10 yrs.)				X	
Reliance by purchasing		X	X		
Establish roads, street etc.	X	X	X		
Improving roads, street etc.	X	X	X		
Failing to assess property taxes	X	X	X		
Compliance with relevant statutes	X				X
Open & hostile				X	
Adverse				X	
Exclusive				X	
Public purpose	X	X	X		X
Public necessity					X
Just compensation					X

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